Supreme Court, U. S.
FILED
NOV 24 1978
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1978

No. 78-342

AURELIO FREGOSO JARA,

Petitioner,

vs.

MUNICIPAL COURT OF SAN ANTONIO JUDICIAL DISTRICT,

Respondent,

THE COUNTY OF LOS ANGELES and LE ROY BELL,

Real Parties in Interest.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOHN H. LARSON
County Counsel

MICHAEL H. DOUGHERTY
Deputy County Counsel

DAVID B. KELSEY
Deputy County Counsel

648 Hall of Administration
500 West Temple Street
Los Angeles, Califrnia 90012
(213) 974-1930

Attorneys for Respondent and
Real Party in Interest
COUNTY OF LOS ANGELES

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1978

No. 78-342

AURELIO FREGOSO JARA,

Petitioner,

vs.

MUNICIPAL COURT OF SAN ANTONIO JUDICIAL DISTRICT,

Respondent,

THE COUNTY OF LOS ANGELES and LE ROY BELL,

Real Parties in Interest.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOHN H. LARSON
County Counsel

MICHAEL H. DOUGHERTY
Deputy County Counsel

DAVID B. KELSEY
Deputy County Counsel

648 Hall of Administration
500 West Temple Street
Los Angeles, Califrnia 90012
(213) 974-1930

Attorneys for Respondent and
Real Party in Interest
COUNTY OF LOS ANGELES

TOPICAL INDEX

	Page
Table of Authorities	**ii**
QUESTION PRESENTED	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
1. THE CALIFORNIA SUPREME COURT FOLLOWED THE LAW AS CLEARLY OUTLINED BY THIS COURT IN ITS CASES DEALING WITH ACCESS TO COURTS IN CIVIL LITIGATION.	4
2. THE QUESTION PRESENTED IS NOT OF SUFFICIENT IMPORTANCE FOR THE SUPREME COURT TO REVIEW.	9
APPENDIX "1"	

TABLE OF AUTHORITIES

Cases	Page
Argersinger v. Hamlin, 407 U.S. 25	7
Boddie v. Connecticut, 401 U.S. 371	3, 4, 5, 7, 9
Ortwein v. Schwab, 410 U.S. 656	4, 5, 6, 7, 9
United States v. Kras, 409 U.S. 434	4, 5, 6, 7, 9
United States ex rel. Negron v. New York, 434 F.2d 386	6, 7, 9
Constitution	
United States Constitution Sixth Amendment	7
Textbooks	
36 American Law Reports, 3d 276	9
Chang and Araujo, Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant (1975) 63 Cal. L. Rev. 801	9

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term 1978
No. 78-342

AURELIO FREGOSO JARA,

Petitioner,

vs.

MUNICIPAL COURT OF SAN ANTONIO JUDICIAL DISTRICT,

Respondent,

THE COUNTY OF LOS ANGELES and LE ROY BELL,

Real Parties in Interest.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

QUESTION PRESENTED

Does the United States Constitution require states to furnish certified language interpreters to assist indigent civil defendants who are represented by counsel?

STATEMENT OF THE CASE

Petitioner is the defendant in a civil action filed in the Municipal Court of San Antonio Judicial District, County of Los Angeles, California. The complaint in that action seeks the sum of $1,277.09 for property damage arising out of a traffic accident. Petitioner, represented by the Southeast Legal Aid Center, filed an answer and cross-complaint for damages.

Petitioner also filed a pre-trial motion for a certified Spanish-speaking interpreter at public expense. This motion was denied by the Municipal Court which is the respondent herein. In support of the motion, petitioner filed a declaration stating that he did not speak or understand English and had no access to a "certified interpreter." In claiming indigency, petitioner stated his net and gross monthly income and typical expenses. (A copy of the Declaration is attached as Appendix 1.)

Respondent takes slight issue with petitioner's statement of the case at page 4 wherein it is stated that petitioner's affidavit attested that he did not have access to a "qualified court interpreter." The Declaration actually said "certified interpreter." "Qualification" is a matter of opinion. Petitioner has not claimed that language assistance was unavailable to him. All pleadings prepared for petitioner by Legal Aid including the declaration signed under penalty of perjury were in English -

necessitating language assistance. Petitioner's declaration merely states that he does not have access to a certified interpreter. The declaration does not indicate that bi-lingual persons who are not certified court inerpreters could not adequately assist petitioner in understanding the proceedings. (See Petition at pages 6 and 9 where petitioner relies on lack of "qualified" interpreter.)

The petitioner sought and was denied a writ of mandate in the Los Angeles Superior Court to compel respondent Municipal Court to appoint an interpreter. The County of Los Angeles was designated "real party in interest" because the expense of an interpreter would have been borne by the County. The California Supreme Court affirmed the Superior Court's denial of the writ of mandate. The California Court rejected petitioner's contentions that he was entitled to an interpreter by virtue of California statutes, common law and/or the California and United States Constitutions. The Court specifically considered the impact of *Boddie v. Connecticut* (1971) 401 U.S. 371 and subsequent decisions of this Court in rendering its opinion.

REASONS FOR DENYING THE WRIT

1. THE CALIFORNIA SUPREME COURT FOLLOWED THE LAW AS CLEARLY OUTLINED BY THIS COURT IN ITS CASES DEALING WITH ACCESS TO COURTS IN CIVIL LITIGATION.

The rejection of petitioner's contention that the refusal to appoint an interpreter in a civil case denied him an opportunity to be heard and access to the courts was clearly compelled by this Court's decisions in *Boddie v. Connecticut, supra; United States v. Kras* (1973) 409 U.S. 434; and, *Ortwein v. Schwab* (1973) 410 U.S. 656.

The *Boddie* decision mandated the waiver of filing fees in divorce cases. This Court's opinion emphasized that it was dealing with a special situation where the government controlled the exclusive method of altering a fundamental relationship:

> "In concluding that the Due Process Clause of the Fourteenth Amendment requires that these appellants be afforded an opportunity to go into court to obtain a divorce, we wish to re-emphasize that we go no further than necessary to dispose of the case before us. . . . We do not decide that access for all individuals to

the Courts is a right that is, in all circumstances, guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual, for as we have already noted, in the case before us this right is the exclusive precondition to the adjustment of a fundamental human relationship."

(401 U.S. 382-383.)

Accordingly, this Court declined to extend *Boddie* in subsequent cases holding that indigents may be required to pay the filing fee for discharge in bankruptcy and for judicial review of a determination resulting in lower welfare payments. (*United States v. Kras, supra; Ortwein v. Schwab, supra.*) In *Kras*, the Court pointed out that the economic interest of a bankrupt did not rise to the same constitutional level as the marital relationship involved in *Boddie* (409 U.S. 445). It was also recognized that a bankrupt had an extrajudicial remedy, whereas a person seeking a divorce must resort exclusively to courts for relief (409 U.S. 445-446). Finally, the Court found a rational basis for the fee requirement because the government *"sought to make the system self-sustaining and paid for by those who use it rather than by tax revenues drawn from the*

public at large." (409 U.S. 447, 448, emphasis added.) It was thus concluded that the fee requirement did not violate either the Due Process or Equal Protection guarantees.

Similarly, in *Ortwein v. Schwab, supra,* this Court determined that a filing fee charged welfare recipients who appealed reduction of benefits did not deny Due Process or Equal Protection. The Court stated that the underlying litigation was in the area of economics and social welfare and that the fee was justified as a means of defraying the operating costs of the state court system (410 U.S. 660). It is significant that this Court recognized the legitimacy of granting less procedural advantages to indigents in general civil litigation than in criminal or quasi-criminal proceedings:

> "If the Oregon courts have interpreted the applicable law to give special rights in the criminal area, in civil cases that result in loss of liberty, and in cases terminating parental rights, we cannot say that this categorization is capricious or arbitrary."
>
> (410 U.S. 661.)

Ignoring this distinction, petitioner attempts to clone a right to an interpreter in civil cases from *United States ex*

rel Negron v. New York (2nd Cir., 1970) 434 F.2d 386, a case involving a murder conviction and a 20-year to life sentence. *Negron* relies at least in part on Sixth Amendment considerations not applicable to general civil litigation. More importantly, constitutional principles require more procedural protection for a person accused of murder than for a person facing a possible economic loss of less than $1,300. Even in criminal cases a state need not furnish certain constitutional protections for those not subject to a potential loss of liberty (*Argersinger v. Hamlin* [1972] 407 U.S. 25).

Applying the *Boddie, Kras, Ortwein* triology to the case at hand, it is apparent that petitioner's interest is economic as in *Kras* and *Ortwein.* This interest may receive less protection than in cases which result in loss of liberty or a change in fundamental family relationship. The state has a legitimate interest in making the civil court system as self-sustaining as possible by having it paid for those who use it.

The California Supreme Court was clearly correct in deciding that the alternatives available to petitioner distinguished this case from *Boddie.*

Petitioner obviously communicated to his counsel and their staff when he obtained representation, and when the pleadings were prepared as well as when the declaration signed by

petitioner was drafted. This declaration indicates that petitioner was employed and paid medical and utility bills (assumedly tendered in English). Petitioner had access to language assistance in conducting his life and his litigation. Petitioner does not contend that this help would be unavailable at trial. That such assistance is not in the form of a "certified interpreter" is not of constitutional dimension under the circumstances of this case. As the court pointed out, California statutory law provides an interpreter for witnesses during testimony (see Appendix "A" to Petition, pages 2 and 4). Therefore, petitioner will be able to testify. In addition, petitioner is represented by counsel who will control the proceedings at trial. These alternatives assure reasonable access to the courts as measured by the standards provided by this Court.

Because the decision of the California Supreme Court is an application of the principles clearly enunciated by this Court, a writ of certiorari should not issue.

2. THE QUESTION PRESENTED IS NOT OF SUFFICIENT IMPORTANCE FOR THE SUPREME COURT TO REVIEW.

Petitioner and respondent have been unable to find any appellate decisions conflicting or agreeing with the California Supreme Court's decision. Although *Negron v. New York, supra,* has been a well known federal decision for eight years, no court has applied its principles to general civil litigation. Discussion of interpreters has been limited to the criminal law field which remains unsettled on the subject. (See Chang and Araujo, Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant [1975] 63 Cal. L. Rev. 801, and 36 American Law Reports, 3d 276.)

It is submitted that the lack of judicial interest in the issues generated by the petition is due: (1) to the *Boddie, Kras* and *Ortwein* trilogy which clearly outlines the states' responsibilities toward indigents in economic litigation, and (2) to the lack of a substantial practical impact of cases involving indigent civil defendants. Because indigents are not likely to become defendants in economic litigation, this case is somewhat of an anomaly. Rare indeed will be the plaintiff that pursues a case to judgment against a defendant who can show that he or she does not even have funds for an interpreter.

There being no demonstrated interest in this area of the law, there being little likelihood that this case will result in substantial impact, and the California Supreme Court having found that sufficient alternative means exist to preserve this petitioner's rights, it is submitted that the petition for writ of certiorari should be denied.

Dated:

Respectfully submitted,

JOHN H. LARSON
County Counsel

MICHAEL H. DOUGHERTY
Deputy County Counsel

DAVID B. KELSEY
Deputy County Counsel

Attorneys for Respondent and
Real Party in Interest
COUNTY OF LOS ANGELES

APPENDIX "1"

DECLARATION OF FREGOSO JARA

I, FREGOSO JARA declare as follows:

That on or about February 22, 1974, I retained the Southeast Legal Aid office to represent me in a legal action filed against me.

I do not speak or understand the English language, and have no excess to a certified interpreter without cost.

My gross monthly income as head of my family, is $624.00 per month, my net monthly income is $530.00. My family consists of three adults including myself, and three minor children. I have no real or personal property and or assets.

My monthly expenses are as follows:

Monthly rent is $190.00, food $225.00, clothing $60.00, Transportation $66.00, utilities $35.00, medical and dental $30.00, Total expenses are $676.00

Ms. Dawn Scott, is my attorney and represents me in this action.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 21, 1975, at Compton, California

_____

FREGOSO JARA